unable to propose amendments to Form G–405 at the same time the SEC made changes to its respective form since the Treasury's rulemaking authority under the GSA expired on October 1, 1991, and was not reauthorized until December 17, 1993.[6]

The collection of information in these proposed amendments to Form G–405 is contained in the new Item 15 of the form which poses a simple, factual question. Form G–405 is required to be submitted by registered government securities brokers and dealers to the SEC or to the appropriate regulatory authority according to an SEC approved plan. The requirement to file Form G–405 is not applicable to financial institutions that have filed notice as government securities brokers and dealers.

The Department is proposing to add only the new item 15 to Schedule I, and it believes that the changes will not have more than a *de minimis* effect on the amount of time necessary to complete the form. The Department's most recent Paperwork Reduction Act Filing with respect to all parts of Form G–405, which includes Part I, Part IA, Part II, Part IIA, and Part III as well as the proposed amended Schedule I, shows an annual estimate of 41 respondents filing 12 times per year, with a burden of 144 hours per respondent per year. Since Schedule I is only filed once per year while the other parts are filed monthly or quarterly, the burden represented by the entire Schedule I is only a fraction of the burden imposed by the complete form. The requirements for filing Form G–405 have been previously reviewed and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3504(h)) and assigned control number 1535–0089. No modification is projected to the reporting burden.

List of Subjects in 17 CFR Part 449

Banks, banking, Brokers, Government securities, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, it is proposed to amend 17 CFR part 449 as follows:

PART 449—FORMS, SECTION 15C OF THE SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 449 is revised to read as follows:

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3208; Sec. 4(b), Pub. L. 101–432, 104 Stat. 963; Sec. 102, Sec. 106, Pub. L. 103–202, 107 Stat. 2344 (15 U.S.C. 78o-5(a), (b)(1)(B), (b)(4)).

§ 449.5 [Amended]

2. Amend Form G–405, referenced in § 449.5, in Schedule I to add instruction 15 a, b and c to the General Instructions, to redesignate Questions 15–18 as Questions 16–19, and add new Question 15 to read as follows:

Note: The text of Form G–405 does not appear in the Code of Federal Regulations.

Form G–405, Report on Finances and Operations of Government Securities Brokers and Dealers, Schedule I:

* * * * *

General Instructions

* * * * *

15 a, b & c—Report whether respondent directly or indirectly controls, is controlled by, or is under common control with, a U.S. bank. If the answer is ''yes,'' provide the name of the affiliated bank and/or bank holding company, and describe the type of institution. The term ''bank'' is defined in section 3(a)(6) of the Securities Exchange Act of 1934.

* * * * *

15. (a) Respondent directly or indirectly controls, is controlled by, or is under common control with, a U.S. bank.
(Enter applicable code: 1=Yes 2=No) _____
(b) Name of parent or affiliate _____
(c) Type of institution _____

* * * * *

Dated: January 19, 1995.

Frank N. Newman,

Deputy Secretary.

[FR Doc. 95–2135 Filed 1–27–95; 8:45 am]

BILLING CODE 4810–39–P

[6] Pub. L. No. 103–202, 107 Stat. 2344 (1993).

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 778

Availability of Decision; Minimum Requirements for Legal, Financial, Compliance and Related Information

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of decision on petition for rulemaking.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is making available to the public its final decision on a petition for rulemaking from Mr. James Kringlen, Attorney at Law, Appalachian Research and Defense Fund, Inc., Charleston, West Virginia. The petitioner requested that ''* * * a new regulation be issued by the Office of Surface Mining or the Department of the Interior, as appropriate, which would require all permit applications for surface mining include documentation *with public records* identifying the surface owners of the property they propose to mine as well as the property contiguous to the proposed mining property.'' OSM is denying the petition for reasons outlined in this document.

ADDRESSES: Copies of the petition, and other relevant materials comprising the Administrative Record of this petition are available for public review and copying at Office of Surface Mining Reclamation and Enforcement, Room 660, 800 North Capitol Street NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Scott Boyce, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–343–3839.

SUPPLEMENTARY INFORMATION:

I. Petition for Rulemaking Process.
II. The Kringlen Petition.

I. Petition for Rulemaking Process

Pursuant to section 201(g) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), any person may petition the Director of OSM for a change in OSM's regulations. The regulations governing the handling of rulemaking petitions are found at 30 CFR 700.12. Under the rules, the Director may publish a notice in the Federal Register seeking comments on the petition and hold a public hearing, conduct an investigation, or take other action to determine whether the petition should be granted. If the petition is granted, the Director initiates a rulemaking proceeding. If the petition is denied, the Director notifies the petitioner in writing setting forth the reasons for denial. Under 30 CFR 700.12 the Director's decision constitutes the final decision for the Department of the Interior.

II. The Kringlen Petition

The Department of the Interior received a letter dated January 31, 1994, from James Kringlen, Attorney at Law, Appalachian Research and Defense Fund, Inc., Charleston, West Virginia, as a petition for rulemaking. The petitioner requested that ''* * * a new regulation be issued by the Office of Surface Mining or the Department of the Interior, as appropriate, which would require all permit applications for surface mining include documentation *with public records* identifying the surface owners of the property they propose to mine as well as the property

contiguous to the proposed mining property.''

For the reasons discussed in the appendix to this notice, the Director has denied the petition. The Director's letter of response to the petitioner on this rulemaking petition appears in the appendix to this notice. This letter reports the Director's decision to the petitioner. Included in the appendix is an evaluation report on the issues raised by the petitioner. Included in this report is a discussion of the comments received on the petition and OSM's position on the issues.

Dated: January 18, 1995.

Robert Uram,

Director, Office of Surface Mining Reclamation and Enforcement.

Appendix

January 18, 1995.

Mr. James Kringlen,

Appalachian Research and Defense Fund, Inc., 1116–B Kanawha Boulevard, East, Charleston, West Virginia 25301.

Dear Mr. Kringlen: This is in response to your letter of January 31, 1994, to Bruce Babbitt, Secretary of the Interior, which was forwarded to the Office of Surface Mining Reclamation and Enforcement (OSM) for appropriate action. In your letter you propose that ''. . . a new regulation be issued by OSM or the Department of the Interior (DOI), as appropriate, which would require all permit applications for surface mining include documentation *with public records* identifying the surface owners of the property they propose to mine as well as the property contiguous to the proposed mining property.''

On March 28, 1994, OSM published a notice of availability in the Federal Register and requested comments on the petition (59 FR 14374). The comment period closed on April 27, 1994. Nine comments were received by OSM during the comment period.

After careful consideration of the arguments presented in the petition and public comments, I am denying the petition. The basis for my decision is fully disclosed in the enclosed evaluation of the petition. As provided in 30 CFR 700.12, this decision constitutes the final decision for the Secretary of the Interior.

I would like to take this opportunity to thank you for bringing the problems faced by Mrs. Caudill to our attention. Efforts such as yours provide both the impetus and the guidance necessary for us to critically examine our program and take corrective action where necessary.

Sincerely,

Robert J. Uram,

Director.

Evaluation of the Petition To Amend OSM's Rules Governing Right-of-Entry Documentation Required in Permit Applications

Background on Petition

On February 18, 1994, a petition from Mr. James Kringlen, Appalachian Research and Defense Fund, Inc., 1116–B Kanawha Boulevard, East, Charleston, West Virginia 25301 (the petitioner) was forwarded from the Secretary's Office, Department of the Interior, to OSM. The petition requested that ''* * * a new regulation be issued by the Office of Surface Mining or the Department of the Interior, as appropriate, which would require all permit applications for surface mining include documentation *with public records* (emphasis included) identifying the surface owners of the property they propose to mine as well as the property contiguous to the proposed mining property.''

Section 201(g) of the Surface Mining Control and Reclamation Act of 1977 (the Act) and 30 CFR 700.12 provide that any person may petition the Director to initiate a proceeding for the issuance, amendment, or repeal of a rule promulgated under the Act. These regulations require the petition to set forth the facts, technical justification, and law which require the issuance, amendment, or repeal of a regulation. 30 CFR 700.12(b). Based on this information, the Director shall determine if the petition provides a reasonable basis for the proposed action. Facts, technical justification, or law previously considered in a petition or rulemaking on the same issue shall not provide a reasonable basis. The Director may hold a public hearing or conduct other investigations or proceedings in order to determine whether the petition should be granted. 30 CFR 700.12(c). If the petition is granted, the Director is required to commence a rulemaking proceeding. 30 CFR 700.12(d)(1). If the petition is denied, the Director is required to notify the petitioner in writing of the reasons for denial. 30 CFR 700.12(d)(2).

On March 28, 1994, OSM published a notice in the Federal Register requesting comments on the petition. In the notice, OSM announced that it would not hold a public hearing but would accept written comments on the petition during the comment period which would end on April 27, 1994. It stated that, by appointment, OSM employees would be available to meet with the public during business hours (9 a.m. to 5 p.m. Eastern standard time) during the comment period. The notice also stated that all comments and supporting documents would be entered into the Administrative Record on the petition (59 FR 14374).

OSM received comments from the Ohio Mining and Reclamation Association, the Dickenson County Citizens Committee, the U.S. Department of the Interior Bureau of Mines, the Alabama Coal Association, the Illinois Department of Mines and Minerals, the Wyoming Department of Environmental Quality, the Kentucky Resources Council, the Indiana Department of Natural Resources, and the Joint NCA/AMC Committee on Surface Mining Regulations. These comments have been made part of the Administrative Record.

Applicable Law and Regulations

Sections 102, 201(c), 501(b), 503, 504, and especially 507(b) and 510(b)(6) of the Act which establish application requirements regarding documentation of the right is enter and commence surface mining operations.

30 CFR § 773.15(c) which requires that the regulatory authority find in writing that the application is complete and accurate and that the applicant has complied with the requirements of the Act and the regulatory program.

Section 778.15(a) which requires that the permit applicant describe and identify the documents upon which he bases his right to enter and commence surface mining, and also state whether the right is subject to any pending litigation.

Section 778.15(b) which provides that in the situation where the private mineral estate has been severed from the private surface estate, the applicant must also submit copies of 1) the written consent of the surface owner for the extraction of coal by surface mining methods; 2) copies of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or 3) if the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that under applicable State law the applicant has the legal authority to extract the coal by those methods.

Section 778.15(c) which closely tracks the language in Sec. 507(b)(9) of the Act by providing that ''(n)othing in this section shall be construed to provide the regulatory authority with the authority to adjudicate property rights disputes.''

30 CFR PART 775—Administrative and Judicial Review of Decisions, Which prescribes requirements for

administrative and judicial review of decisions on permits.

Summary of Petition

The petitioner supports his rulemaking petition by citing the experience of a former client, a Mrs. Caudill, who faced the possibility of having her property mined in accordance with an approved mining permit despite the fact that she had not granted the mining company the right to mine, and despite the fact she had brought this information to the attention of the regulatory authority. In that case, her ownership of the property was not reflected in the documentation provided to the regulatory authority by the permit applicant. Rather, the application and accompanying maps asserted that neighbors on either side of her property were the owners of her property. The situation faced by Mrs. Caudill was exacerbated by the fact that the regulatory authority, when presented with information contradicting the ownership representation of the permit application, took the position that the new information presented by Mrs. Caudill established a property title dispute and it lacked the authority to resolve such disputes.

The petitioner's letter further states that, subsequent to representing his client before the Kentucky Department for Surface Mining Reclamation and Enforcement, he learned that ''very often coal companies knowingly submit permit applications which fail to identify all of the surface owners of record.'' He further states this is done, at least in part, because real estate negotiations relative to the potentially affected properties are continuing subsequent to submission of the permit application. Thus, there is incentive for permit applicants to present real estate information as they expect, or at least hope, it will be at the time of permit issuance. The petitioner concludes: ''(s)ince the states require neither documentation of the ownership of the surface of the property proposed for surface mining, nor verify the information provided by coal companies in the permit application review process, the coal companies have little incentive to accurately identify the surface owners of the property.'' To rectify the problems for landowners associated with this scenario, the petitioner ''proposes a new regulation * * * which would require all permit applications for surface mining include documentation *with public records* (emphasis included) identifying the surface owners of the property they propose to mine as well as the property contiguous to the proposed mining property.''

Analysis and Comments

OSM's summary analysis of the petition and comments received indicates that:

The problem of regulatory authorities issuing permits to mine land for which the permit applicant has not established the right to enter and mine is generally limited to the State of Kentucky;

The implementation of the petitioner's request that public right-of-entry records be included in all cases in the permit application would often create a significant and unnecessary paperwork burden, particularly for regulatory authorities and mining companies in the West;

Including public right-of-entry records in permit applications would not change the decision of the regulatory authority in most instances. For example, of the five Ten Day Notice appeals under 30 CFR 842.15 involving right-of-entry that occurred between 1991 and the present (all appeals were in Kentucky), only one probably would have been decided differently if the public records requested by the petitioner has been available to the regulatory authority.

Kentucky's current right-of-entry permitting procedures, which were implemented subsequent to the incident involving Mrs. Caudill's property, require that whenever a landowner files a protest contesting a permit applicant's right to enter his property, the Natural Resources and Environmental Protection Cabinet must determine whether the applicant has made a *prima facie* case that he has the right to enter and mine.

OSM can respond to the problem raised by the petitioner most efficiently by monitoring Kentucky's protection of landowner rights through oversight of the Kentucky program.

Nine commenters responded to the notice of the Kringlen petition. Two commenters did not provide substantive comments. One of these two responded with a ''no comment.'' The other apparently misread the petition and stated that the existing regulations already contain the provisions sought by the petitioner. Two commenters representing environmental associations concurred in the existence of the problem cited to by the petition. One of these two commenters supported the issuance of the petitioner's requested rulemaking. The other commenter supported the general goals of the petition but did not endorse the requested rule as effectively addressing the basic right-of-entry problem underlying the petition. These two commenters raised issues and made several suggestions which will be discussed below.

Five other commenters argued against the requested rulemaking viewing the right-of-entry problem described by the petitioner as either not being possible within the context of the regulatory programs with which they were familiar or representing merely an isolated aberration to an otherwise adequately functioning program. OSM generally agrees with the second of these assessments. Information available from sources within the Agency corroborate that the right-of-entry problems such as described by the petitioner are relatively infrequent events which have, for all intents and purposes, confined themselves to the State of Kentucky. OSM believes that these problems were due in major part to a failure of the Kentucky regulatory authority to properly implement its existing permit regulations.

Subsequent to the incident involving the Caudill property, Kentucky instituted a new right-of-entry policy which requires that whenever a landowner files a protest contesting a permit applicant's right to enter his property, the Natural Resources and Environmental Protection Cabinet must determine whether the applicant has made a *prima facie* case that he has the right to enter and mine. This new Kentucky right-of-entry policy should dramatically reduce or eliminate the type of problem experienced by Mrs. Caudill. Even if Kentucky had not taken measures to address this problem, OSM submits that one State's problems are not sufficient basis for a national rule. This Office will, however, continue to monitor the protection of landowner rights in Kentucky through its oversight of that program.

One commenter opposing the petition argued that a rulemaking was not necessary in the light of the IBLA decision in *Marion H. Taylor* (No. 92–189, 125 IBLA 271 (1993)). That commenter characterized the decision as requiring that a pending property title dispute raised during permit or administrative review ''* * * *must be resolved by the judiciary prior to a final permitting decision by the regulatory authority, in order for the regulatory authority to make the required permit issuance findings* (emphasis included).'' Another commenter supporting the petition cited the *Taylor* IBLA decision and an August 9, 1993, ten day notice letter from W. Hord Tipton, Deputy Director, OSM, to David Rosenbaum, Department for Surface Mining, Commonwealth of Kentucky, [which letter also cites the Taylor decision] to argue that where there is a ''pending legal challenge'' or ''dispute'' to right-of-entry, the regulatory authority cannot make a *prima facie* determintion of a right to mine; rather, the only proper response of the regulatory authority is to withhold permit issuance pending

resolution of the matter. OSM notes, however, that the *Taylor* decision was vacated on jurisdictional grounds by the U.S. District Court for the Eastern District of Kentucky. *Coal Mac. Inc.* v. *Babbitt,* Civil No. 93–117 (October 3, 1994). The implications of these and other right-of-entry cases for Federal and State programs is under review by OSM.

The two environmental commenters who generally supported the Kringlen petition raised issues and made several rulemaking suggestions which were beyond the narrow scope of the Kringlen petition. OSM is, however, concerned that these comments may reflect some misunderstanding of the operation of the current rules. Therefore, OSM wishes to respond to the comments as follows:

(a) One environmental commenter would require that the permit applicant conduct a record search to ensure that the permit information is accurate and complete as implicitly required by sections 507(b) 1) and (2) and 507(b) (9) and (13) of the Act. OSM readily acknowledges that many times the need for the permit applicant to conduct a record search is implicit in fulfilling the information requirements of the cited sections.

However, there are many other times when a record search would reasonably not be necessary and, therefore, should not be required. For example, one commenter opposing the petition noted that documents dispositive to right-of-entry disputes providing for right-of-way, temporary easements, etc., are often not recorded in the courthouse and therefore would not be included among the petitioner's requested documents of record.

(b) This same environmental commenter opposed the current provisions of 30 CFR 778.15 which specifically require only that the application contain a description of the documents upon which the applicant bases his legal right to enter and begin surface coal mining operations. The commenter faults the preamble logic of the proposed and final § 778.15 which considered and rejected the required submission in *all* cases of actual copies of right-of-entry documents relied upon. 43 FR 41692, September 18, 1978, and 44 FR 15028, March 13, 1979. The commenter argues that the permit applicant should be required to submit in all cases, or at a bare minimum in *disputed* cases, the actual copies of all right-of-entry documents relied upon. For the reasons expressed in its 1978 and 1979 preambles and as echoed by another commenter opposing the instant petition, OSM continues to believe that the required submission of all right-of-entry documents in all cases would often impose a significant and unnecessary burden on the permit applicant.

In support of its argument for the required submission of all right-of-entry documents in *disputed* cases, the prior environmental commenter expressed particular concern that once a right-of-entry dispute arose, the regulatory authority might not have authority under 30 CFR 778.15 to require actual copies of the documents but would have to rely merely on a description of documents upon which the asserted applicant right-of-entry was based. The major industry commenter opposing the petition reviewed the 1979 preamble discussion of proposed 30 CFR 778.15 and concluded that the regulatory authority currently has authority to request such copies to resolve a dispute of fact as to whether a legal right claimed by the applicant exists. OSM concurs that the preamble discussions of proposed and final section 778.15 support this conclusion. 43 FR 41692, September 18, 1978, and 44 FR 15028, March 13, 1979.

Indeed, in most cases it would be difficult to conceive of the regulatory authority being able to resolve such disputes without viewing actual copies of documents relied upon for right-of-entry. Of course, because of the proviso clause in paragraph 507(b)(9) of the Act, such a determination of fact would not mean that the regulatory authority was making a legal determination about the right to enter. 43 FR 41692, September 18, 1978. With regard to the concerns raised by the petitioner, OSM has found that, with the exception of a few instances where the State counterpart to 30 CFR 778.15 was improperly applied in the State of Kentucky, the rule has generally worked to protect the rights of landowners as required by section 102(b) of the Act.

(c) The prior environmental commenter also requested that OSM: (1) Provide clarification as to the appropriate interpretation of existing procedures in the event of a dispute as to right-of-entry information in a permit application; and (2) conduct a national study of the right-of-entry issues raised by the petitioner and commenters. As noted above, these requests extend far beyond the narrow scope of the instant petition.

(d) The other environmental commenter suggested that the regulatory authority check and substantiate all submitted ownership documentation for completeness and authenticity. OSM experience indicates that this is not necessary on a routine basis and should be carried out only when needed. The regulatory authority does not have the manpower to do this on a routine basis nor the statutory authority to resolve the property disputes which could result from efforts to authenticate ownership documentation.

Summary

The information available to OSM indicates that the incident that prompted the petition represents a problem localized in the State of Kentucky. Requiring the applicant in all cases to include documentation with public records identifying the surface owners of the property they propose to mine as well as the property contiguous to the proposed mining property as requested by the petitioner would often impose a substantial and unnecessary burden, particularly to coal companies and regulatory authorities involved in the permitting of large Western mines. Since the incident that prompted the petition, Kentucky has instituted a new policy which requires that when a surface owner files a protest to the issuance of a permit the Natural Resources and Environmental Protection Cabinet must make a determination as to whether the applicant has made a *prima facie* showing that he has the right to enter and mine the property. These facts lead us to conclude that there is insufficient basis for the national rulemaking requested by the petitioner. OSM shall, through its oversight program, evaluate Kentucky's protection of landowner rights to make certain that the State regulations as implemented are as effective as the Federal regulations in protecting those rights. In addition, OSM is reviewing the implications for Federal and State programs of recent court and IBLA decisions on right-of-entry issues. This petition and comments thereto shall become part of the record as OSM conducts oversight of the Kentucky State Program.

[FR Doc. 95–2213 Filed 1–27–95; 8:45 am]

BILLING CODE 4310–05–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7124]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).